

Code on investigation of suspected insurance fraud cases – February 2016

Summary

This code sets out the legal and ethical principles guiding insurance and pension companies' actions in cases of suspected insurance fraud. Insurance & Pension Denmark (*Forsikring & Pension*) recommends members to apply the principles set out.

Introduction – why investigate cases of suspected insurance fraud?

An insurance agreement is based on mutual trust between the customer and the insurance company. The customer rightfully expects the insurance company to provide objective and prompt assistance in claims situations to ensure that the customer receives the compensation and assistance that he/she is entitled to. Likewise, the insurance company expects the customer to provide correct and required information for the processing of the claim in order for the company to be able to pay out the compensation that the customer is entitled to.

If suspicion of insurance fraud arises during the insurance company's standard claims processing, the insurance company may commence further investigation.

A number of surveys show that insurance fraud running into several billion kroner is committed in Denmark each year, causing insurance companies to pay out unjustified compensation. This results in an unintended increase in claims expenses, and it means that each individual Dane will be charged more for their insurance covers. For the benefit of the law-abiding customers, who make up the overwhelming majority, the insurance companies seek to limit the number of insurance fraud cases insofar as possible.

The customers and the insurance companies have a common interest in conducting investigations of suspected insurance fraud cases. As the starting point of an investigation is often only a suspicion, it is important that the insurance companies solely apply investigative techniques that are commensurate with the extent of the suspected fraud and that will have the least possible impact on the customer. For this reason, Insurance & Pension Denmark has prepared guidelines to ensure fair and proper treatment of the customer during the necessary investigation to confirm or eliminate the suspicion of fraud.

Insurance & Pension Denmark recommends members to apply the principles set out in the following.

1. Which overall rules apply to the investigation conducted by the members?

- The members must ensure strict compliance with the rules applicable under Danish law, including the rules of the Danish Criminal Code, the Danish Data Protection Act and the Danish Financial Business Act.
- The members must conduct the investigation objectively and considerately.
- The members' investigation must always be commensurate with the extent of the alleged fraud.
- The members' employees investigating cases of alleged insurance fraud must not be remunerated in such a way that their objectivity may be called into question.
- The members must always provide a clear and thorough reason for rejecting payment of compensation or ceasing regular benefit payments due to insurance fraud.

2. The least intrusive investigative technique as starting point

Insurance & Pension Denmark (*Forsikring & Pension*) recommends members to apply the least intrusive investigative techniques possible and to only make use of more intrusive techniques if there is strong suspicion of fraud and if all less intrusive investigative techniques have been exhausted without success. Surveillance, photos and video recordings of the customer/claimant are examples of more intrusive investigative techniques.

3. More intrusive investigative techniques not applied in the industry

Investigative techniques that are perceived as very intrusive are not applied by insurance and pension companies. Against that background, Insurance & Pension Denmark recommends members **to not:**

- use a false identity to befriend the customer/claimant on social media;
- attach GPS tracking equipment to a vehicle to track a person's movements;
- contact the family and close friends of the customer/claimant on their own initiative and without the consent of the customer/claimant;
- analyse a DNA sample from a person;
- search waste bins/trash bags.

4. What must the customer/claimant be notified of and when?

When the insurance company processes and possibly investigates a claim, personal data on the customer/claimant may appear. If personal data is obtained, the customer/claimant must be notified hereof, see the rules of the Danish Data Protection Act on duty of disclosure.

Whether the insurance company subsequently decides to erase the data, or whether the customer/claimant receives compensation are of no relevance to the duty of disclosure.

In many cases, the customers are already aware of the registration of data or have consented to the company obtaining the data before the processing of the claim commences.

Photos and video recordings can be perceived as particularly intrusive, and for this reason Insurance & Pension Denmark recommends members to always expressly notify the customer hereof.

5. Police report

It is in the general interest of society that cases concerning insurance fraud are brought to court. This may have a deterrent effect, limiting the number of future insurance fraud cases.

Insurance & Pension Denmark recommends members to hand the case over to the police or report the suspect if they find sufficient evidence to prove that the suspect should be found guilty of insurance fraud.

All case files and obtained data should be handed over to the police in connection with the report/handover of the case.

6. Special matters for the members to be aware of

When applying some of the investigative techniques, the members must be aware of special matters.

6.1 Contact with third parties

If an insurance company, without the consent of the claimant, contacts persons other than those mentioned in item 3, the insurance company must be particularly careful not to disclose any confidential information about the claimant, including the claimant's insurance case with the company.

This is regulated in section 117 of the Danish Financial Business Act.

6.2 Information from publicly available websites

Insurance companies may legally obtain information from publicly available websites, including personal blogs, unless the blog requires a password provided by the author.

For so-called social networks, such as Facebook, LinkedIn, Twitter etc., the general rule is that information made available on a user's public page may be applied.

However, it would be contrary to section 263 of the Danish Criminal Code to log in to a user's network profile by attempting to guess the password, just as it would be illegal to attempt to gain unauthorised entrance to a house by using a found key.

Borrowing a "friend's" password in order to log in to a profile is also illegal.

6.3 Interception of communication in a room where you are present

The general rule is that you are always allowed to intercept communication that you participate in or are exposed to, for instance by being (obviously) present in a room where others engage in a conversation. If the audio recording equipment is activated and switched on, you are not allowed to leave the equipment.

This is regulated in section 263(1), no. 3 of the Danish Criminal Code.

6.4 Recording of telephone conversations that you participate in

The same principles as set forth above apply.

This is also regulated in section 263(1), no. 3 of the Danish Criminal Code.

6.5 Photos and video recordings of people

An insurance company may photograph and video record persons in public places and in private places available to the public.

“Public” may be difficult to define in relation to, for instance, private properties that are available to the public. In general, it is a matter of whether the public is generally admitted to the location. It is lawful to take photos, for instance, in private places that are available to the public, such as the gym or a restaurant, unless the owner explicitly expresses that taking pictures is not allowed.

This is regulated in section 264 of the Danish Criminal Code.

6.6 Surveillance of suspect

In general, surveillance of people is allowed at any generally accessible location. Surveillance must not be conducted in a way that is a nuisance to the observed, for instance, in such a way that the observed feels pursued or threatened or that the surveillance is obvious to others.

6.7 Data from phone masts, mobile phones and car keys

Data from phone masts, mobile phones and car keys should be treated as personal data and must be processed according to the Danish Data Protection Act. This means that the general rules on consent or other authority apply. The insurance company must notify the customer when it has obtained such data.

This is regulated in section 28 of the Danish Data Protection Act.